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6 ROBERTA SOHAL, et al.,

7 Plaintiffs,

8 No. C 11-01941 JSW

9 v.

10 FEDERAL HOME LOAN MORTGAGE
11 CORPORATION, et al.,

12 **ORDER IN ADVANCE OF FINAL
13 PRETRIAL CONFERENCE**

14 Defendants.

15 _____ /
16 The Court has begun to consider the parties' pretrial filings, and in light of several
17 disputes raised by way of motions in limine and final jury instructions, the Court HEREBY
18 ORDERS that the parties shall be prepared to address the following issues at the pretrial
19 conference. The parties shall not submit further briefing on these issues, absent an Order from
20 the Court.

21 1. Defendants argue that Wells Fargo remained the beneficiary of record until
22 January 11, 2011. Similarly, in the opposition to Plaintiffs' motion in limine number 2, the
23 Defendants contend that *if the Court finds* that Wells Fargo was not the beneficiary of record at
24 the time the Substitution of Trustee was executed, the evidence the plaintiffs seek to exclude is
25 relevant to the issue of agency. In its Order denying the motion for summary judgment, the
26 Court found, as a matter of law, that Freddie Mac was the beneficiary under the Deed of Trust
27 as of February 2008. (Docket No. 102, Order at 10:3-14.) That fact impacted the Court's ruling
28 on the wrongful foreclosure claim, and Defendants never moved for leave to file a motion for
reconsideration.

1 **On what basis do the Defendants argue this Court's ruling can, or should, be**
2 **revisited?**

3 2. a. Plaintiffs' theory of this case has been that the foreclosure sale was void,
4 and the Court has understood that Plaintiffs seek to set aside that sale as a remedy. Is the Court
5 correct that this is one of the remedies that Plaintiffs seek?

12 c. In *Herrera v. Federal National Mortgage Ass'n*, 205 Cal. App. 4th 1495
13 (2012), the court stated that even if plaintiffs had shown that an assignment of a deed of trust
14 and substitution of trustee were void, plaintiffs would still be required to show prejudice to
15 prevail on a claim for wrongful foreclosure. On what basis, other than the fact that *Hererra* is a
16 MERS case, would Plaintiffs distinguish *Herrera*?

17 3. Plaintiffs proposed final jury instructions state that they are seeking damages for
18 *claims* of intentional and negligent infliction of emotional distress. (See Docket No. 117 at 14,
19 21.) Plaintiffs' First Amended Complaint does not include such claims, and Plaintiffs have
20 never moved to amend their complaint to include those claims. On what basis do Plaintiffs
21 contend they can pursue these *claims*? Or, are Plaintiffs merely seeking emotional distress
22 damages as a *remedy* for the wrongful foreclosure claim?

IT IS SO ORDERED.

24 || Dated: January 23, 2013

Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE